UNITED MALACCA BHD

v.

PENTADBIR TANAH DAERAH ALOR GAJAH & OTHER APPLICATIONS

FEDERAL COURT, KUALA LUMPUR
AHMAD FAIRUZ CJ (MALAYA)
ABDUL MALEK AHMAD FCJ
HAIDAR MOHD NOOR FCJ
MOHTAR ABDULLAH FCJ
DENIS ONG JCA
[APPLICATIONS NOS: 08-4-2002(M), 08-5-2002(M), 08-6-2002(M), 08-7-2002(M), 08-8-2002(M), 08-9-2002(N), 08-10-2002(N), 08-11-2002(J) & 08-12-2002(N)]
24 AUGUST 2002

CIVIL PROCEDURE: *Appeal - Appeals from High Court - Appeals pertaining to land acquisition - Whether appeals lie to Court of Appeal or Federal Court - Whether right of appeal to Court of Appeal conferred on appellants as of 1 March 1998 by virtue of coming into force of amended s. 49(1) Land Acquisition Act 1960 - Whether appeals before 1 March 1998 lie to Federal Court - Act A 885, Act A 886, Act A 999*

CIVIL PROCEDURE: *Appeal - Transfer of appeal by Court of Appeal to Federal Court - Whether Court of Appeal has power to order a transfer - Whether transfer rendered null and void - Courts of Judicature Act 1964, s. 25*

CONSTITUTIONAL LAW: *Courts - Court of Appeal - Power to transfer cases - Whether Court of Appeal has power to order transfer of case to Federal Court - Courts of Judicature Act 1964, s. 25*

CONSTITUTIONAL LAW: *Courts - Appeals - Appeals from High Court pertaining to land acquisition - Whether appeals lie to Court of Appeal or Federal Court - Whether appeals lie to Court of Appeal as of 1 March 1998 by virtue of amended s. 49(1) Land Acquisition Act 1960 - Whether appeals lie to Federal Court in the interval period between establishment of Court of Appeal on 24 June 1994 and coming into force of amended s. 49(1) on 1 March 1998 - Act A 885, Act A 886, Act A 999*

There were nine motions before the court for extension of time and leave to the Federal Court. They all pertained to land acquisition. The first five motions were concerned with lands in the State of Malacca, the sixth, seventh and nine concerned with lands in Negeri Sembilan and the eighth concerned with a land in Johore. The eighth motion was transferred from the Court of Appeal to the Federal Court.

The issue herein was whether the appeals would lie in the Court of Appeal or in the Federal Court, having regard to the amendment to s. 49(1) of the Land Acquisition Act 1960 ('LAA') which came into force on 1 March 1998. Section 49(1) LAA was amended to confer on a person a right of appeal from a decision of a High Court in respect of land acquisition cases to the Court of Appeal and to the Federal Court. Prior to the amendment, such an appeal from the High Court went to the Supreme Court as there was no Court of Appeal. The Court of Appeal, however, was established on 24 June 1994 with the Supreme Court being referred to as the Federal Court. Therefore, the court had to determine the proper forum for the appeals herein in respect of the interval period between 24 June 1994 (the establishment of the Court of Appeal) and 1 March 1998 (the coming into force of the amended s. 49(1) LAA). Apart from this, the court had to determine whether the Court of Appeal had the jurisdiction to transfer the appeal in relation to the eighth motion to this court.

Held:
Per Abdul Malek Ahmad & Haidar Mohd Noor FCJJ

[1] Before the establishment of the Court of Appeal on 24 June 1994, all appeals prior to that date would lie to the Supreme Court. For decisions from 24 June 1994, the appeals would lie to the Federal Court up to 28 February 1998. As of 1 March 1998, all such appeals lay to the Court of Appeal but for land acquisition matters referred to the court after that date, there shall be no appeal where the award comprises an award for compensation. It followed, therefore that the first five motions pertaining to land acquisition matters in Melaka where the reference to the court was made before 1 March 1998 but the decisions in the High Court were made after that date, the appeals would lie to the Court of Appeal. The remaining four motions relating to land acquisition cases in Negeri Sembilan and Johore where the decisions of the High Court were before 1 March 1998, the appeals would lie to the Federal Court. (pp 187 a-b & 188 c, d-e & g-h)

[2] For the period 24 June 1994 to 28 February 1998, there was the Court of Appeal under the Courts of Judicature Act 1964 ('CJA') as the appellate court against a decision of the High Court and at the same time under the Land Acquisition Act 1960, an appeal against a decision of the High

Court goes to the Supreme Court until it was amended on 1 March 1998. Therefore, there were two parallel Federal legislation in conflict with each other in regard to the appropriate appellate court against a decision of a High Court for the said period. By virtue of s. 4 CJA, where there is a conflict between any other written law and the CJA, other than the Federal Constitution, in force at its commencement then to that extent the CJA prevails. In the event there is a conflict between the CJA and any other written law after the commencement of the CJA, s. 4 is inapplicable. It followed therefore that s. 4 had no application here. Until s. 49(1) of the Land Acquisition Act was amended, the appropriate appellate court for land acquisition cases was the Federal Court (after 24 June 1994 the Supreme Court was referred to as the Federal Court). (pp 192 b-d & 194 e-g)

[3] The transfer of the land acquisition appeal in the eighth motion by the Court of Appeal to the Federal Court was null and void as the Court of Appeal had no jurisdiction to transfer cases to a higher court. The Court of Appeal should have struck out the appeal and left it to the appellant to proceed with the necessary steps as provided by the Rules of the Federal Court 1995, in particular r. 126. (p 200 c)

Per Denis Ong JCA (dissenting)

[1] The creation and interposition of the new and additional right of appeal to the Court of Appeal by the amendments to s. 49(1) LAA was to confer on the person interested under s. 49(1) that right and to stop any leapfrogging from the High Court to the Federal Court but only with effect from 1 March 1998 onwards and not before that date. The new right of appeal created a substantive right and was not merely a procedural matter. Therefore, such amendment could only apply prospectively and not retrospectively unless expressed in clear terms to that effect. The hiatus between 24 June 1994 and 1 March 1998 remains and appeals from the High Court in land acquisition cases continue to be brought directly to the Federal Court, leapfrogging the Court of Appeal. In respect of the first five motions before the court, as the objection and reference against the written award of the Land Administrator took place during the hiatus between 24 June 1994 and 1 March 1998, their rights of appeal were to the Federal Court. Those substantive rights could not be altered or affected by orders of the High Court issued after 1 March 1998. For these reasons, the appeals herein lie to the Federal Court and not to the Court of Appeal. (pp 203 c-g & 204 f)

[First five motions to Court of Appeal; sixth, seventh and ninth to Federal Court; transfer of eighth motion by Court of Appeal null & void.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Terdapat sembilan usul di hadapan mahkamah untuk perlanjutan masa dan kebenaran kepada Mahkamah Persekutuan. Ianya semua berkaitan dengan pengambilan tanah. Lima usul pertama berkenaan tanah-tanah di dalam Negeri Melaka, yang keenam, ketujuh dan kesembilan berkenaan dengan tanah-tanah di Negeri Sembilan dan yang kelapan pula berkenaan dengan tanah di Negeri Johor. Usul kelapan telah dipindah daripada Mahkamah Rayuan kepada Mahkamah Persekutuan.

Isu di sini adalah sama ada rayuan-rayuan tersebut akan dibentangkan dalam Mahkamah Rayuan atau Mahkamah Persekutuan, menimbangkan pindaan kepada s. 49(1) Akta Pengambilan Tanah 1960 ('LAA') yang mula berkuatkuasa pada 1 Mac 1998. Seksyen 49(1) LAA telah dipinda untuk memberikan kepada seseorang hak rayuan daripada satu keputusan Mahkamah Tinggi berhubung dengan kes-kes pengambilan tanah kepada Mahkamah Rayuan dan kepada Mahkamah Persekutuan. Sebelum pindaan tersebut, sesuatu rayuan yang sedemikian daripada Mahkamah Tinggi akan pergi ke Mahkamah Agong kerana tidak terdapat Mahkamah Rayuan. Mahkamah Rayuan, namun begitu, telah ditubuhkan pada 24 Jun 1994 dengan Mahkamah Agong dirujuk sebagai Mahkamah Persekutuan. Oleh itu, mahkamah tersebut haruslah menentukan forum yang wajar untuk rayuan-rayuan di sini berhubung dengan tempoh jeda antara 24 Jun 1994 (penubuhan Mahkamah Rayuan) dan 1 Mac 1998 (penguatkuasaan s. 49(1) LAA yang dipinda). Selain ini, mahkamah tersebut haruslah menentukan sama ada Mahkamah Rayuan mempunyai bidangkuasa untuk memindahkan rayuan berhubung dengan usul kelapan kepada mahkamah ini.

Diputuskan:
Oleh Abdul Malek Ahmad & Haidar Mohd Noor HHMP

[1] Sebelum penubuhan Mahkamah Rayuan pada 24 Jun 1994, kesemua rayuan sebelum tarikh itu akan dibentangkan kepada Mahkamah Agong. Untuk keputusan-keputusan daripada 24 Jun 1994, rayuan-rayuan akan dibentangkan kepada Mahkamah Persekutuan sehingga 28 Februari 1998. Bermula daripada 1 Mac 1998, kesemua rayuan-rayuan sedemikian dibentangkan kepada Mahkamah Rayuan kecuali bagi perkara-perkara berkaitan dengan pengambilan tanah yang dirujuk kepada mahkamah selepas tarikh itu, tidak akan ada rayuan di mana award terdiri daripada award untuk pampasan. Diikuti, oleh itu bahawa lima usul yang pertama berhubung perkara-perkara pengambilan tanah di Melaka di mana rujukan telah dibuat kepada mahkamah sebelum 1 Mac 1998 tetapi keputusan-keputusan dalam Mahkamah Tinggi telah dibuat selepas tarikh itu, rayuan-rayuan akan akan dibentangkan kepada Mahkamah Rayuan. Empat usul selebihnya berkaitan dengan kes-kes pengambilan tanah di Negeri Sembilan

dan Johor di mana keputusan-keputusan Mahkamah Tinggi adalah sebelum 1 Mac 1998, rayuan-rayuan akan dibentangkan kepada Mahkamah Persekutuan.

[2] Bagi tempoh 24 Jun 1994 hingga 28 Februari 1998, terdapatnya Mahkamah Rayuan di bawah Akta Mahkamah Kehakiman 1964 ('AMK') sebagai mahkamah rayuan terhadap keputusan Mahkamah Tinggi dan pada masa yang sama di bawah Akta Pengambilan Tanah 1960, sesuatu rayuan terhadap keputusan Mahkamah Tinggi dikemukakan kepada Mahkamah Agong sehingga ianya dipinda pada 1 Mac 1998. Oleh itu, terdapat dua perundangan Persekutuan yang selari bercanggahan antara satu dengan yang lain berhubung mahkamah rayuan yang sewajarnya terhadap keputusan sebuah Mahkamah Tinggi untuk tempoh tersebut. Menurut s. 4 AMK, di mana terdapatnya percanggahan antara mana-mana undang-undang bertulis yang lain dan AMK tersebut, selain daripada Perlembagaan Persekutuan, yang berkuatkuasa pada permulaannya dari sehingga had AMK itu bertahan. Sekiranya berlaku konflik antara AMK dan sebarang undang-undang bertulis yang lain selepas permulaan AMK tersebut, s. 4 adalah tidak boleh dipakai. Oleh itu, diikuti bahawa s. 4 tidak dipakai di sini. Sehingga terpindanya s. 49(1) Akta Pengambilan Tanah, mahkamah rayuan yang sewajarnya untuk kes-kes pengambilan tanah adalah Mahkamah Persekutuan (selepas 24 Jun 1994 Mahkamah Agong dirujuk sebagai Mahkamah Persekutuan).

[3] Pemindahan rayuan pengambilan tanah dalam usul kelapan oleh Mahkamah Rayuan kepada Mahkamah Persekutuan adalah batal dan tak sah kerana Mahkamah Rayuan tidak mempunyai bidangkuasa untuk merujuk kes-kes kepada sebuah mahkamah yang lebih tinggi. Mahkamah Rayuan sepatutnya membatalkan rayuan tersebut dan membiarkannya kepada perayu untuk meneruskan langkah-langkah yang perlu sepertimana yang diperuntukkan oleh Kaedah-kaedah Mahkamah Persekutuan 1995, khususnya k. 126.

Oleh Denis Ong JCA (menentang):

[1] Pengujudan dan pencelahan hak rayuan baru dan tambahan kepada Mahkamah Rayuan oleh pindaan-pindaan kepada s. 49(1) LAA adalah untuk memberikan pada orang yang berkepentingan di bawah s. 49(1) hak itu dan untuk menghentikan sebarang perbuatan melompat daripada Mahkamah Tinggi kepada Mahkamah Persekutuan tetapi hanya berkuatkuasa daripada 1 Mac 1998 seterusnya dan tidak sebelum tarikh itu. Hak rayuan yang baru mewujudkan hak substantif dan bukan hanya suatu perkara prosedural. Oleh itu, pindaan yang sedemikian hanya boleh dipakai secara prospektifnya dan tidak secara kebelakangan kecuali dinyatakan dengan terma-terma yang jelas berhubung dengannya. Kerumpangan antara 24 Jun 1994 dan 1 Mac 1998 terus berkekalan dan

rayuan-rayuan daripada Mahkamah Tinggi dalam kes-kes pengambilan tanah dikemukakan secara terus kepada Mahkamah Persekutuan, melangkau Mahkamah Rayuan. Berhubung lima usul pertama di hadapan mahkamah, tatkala bantahan dan rujukan terhadap award bertulis Pentadbir Tanah berlaku ketika tempoh selang antara 24 Jun 1994 dan 1 Mac 1998, hak rayuan mereka adalah kepada Mahkamah Persekutuan. Hak-hak substantif itu tidak boleh diubah atau terjejas oleh perintah-perintah Mahkamah Tinggi yang dikeluarkan selepas 1 Mac 1998. Atas alasan-alasan ini, rayuan-rayuan di sini dibentangkan kepada Mahkamah Persekutuan dan tidak kepada Mahkamah Rayuan.

Lima usul pertama kepada Mahkamah Rayuan; usul keenam, ketujuh dan kesembilan kepada Mahkamah Persekutuan; pemindahan usul kelapan oleh Mahkamah Rayuan batal dan tak sah.]

Case(s) referred to:

Batu Kawan Bhd v. Pentadbir Tanah Daerah Seberang Perai Selatan [1998] 3 CLJ 681 ***(refd)***

Batu Kawan Bhd v. Pentadbir Tanah Daerah Seberang Perai Selatan [2002] 1 CLJ 633 ***(refd)***

Chief Kofi Forfie v. Barima Kwabena Seifah [1958] All ER 289 ***(refd)***

Craig v. Kanseen (1) [1943] All ER 108 ***(refd)***

Gana Muthusamy v. LM Ong & Co [1998] 4 CLJ 878 ***(refd)***

Lee Chow Meng v. PP [1978] 2 MLJ 36 ***(refd)***

Lee Lee Chang (f) v. Seow Peng Kwang [1960] 26 MLJ 1 ***(refd)***

Lim Chee Cheng & Ors v. Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam (FC Civil Appeal No: 02-15-2000(P)) (unreported) ***(refd)***

Lye Thai Sang & Anor v. Faber Merlin (M) Sdn Bhd & Ors [1985] 2 CLJ 423; [1985] CLJ (Rep) 196 ***(refd)***

Mohamed Habibullah Mahmood v. Faridah Dato' Talib [1993] 1 CLJ 264 ***(refd)***

Pahang South Omnibus Co v. Minister of Labour and Manpower & Anor [1981] 1 CLJ 83; [1981] CLJ (Rep) 74 ***(refd)***

Pentadbir Tanah Daerah Melaka Tengah v. Mat Nayan Tak [1996] 2 CLJ 618 ***(refd)***

Pepper (Inspector of Taxes) v. Hart [1993] AC 593 ***(refd)***

PP v. Dato' Yap Peng [1987] 1 CLJ 550; [1987] CLJ (Rep) 284 ***(refd)***

Sinnathamby & Anor v. Lee Chooi Ying [1987] 1 CLJ 157; [1987] CLJ (Rep) 336 ***(refd)***

Tanah Sutera Development Sdn Bhd v. Pentadbir Tanah Daerah Johor Bahru [2002] 2 CLJ 14 ***(refd)***

Legislation referred to:

Constitution (Amendment) Act 1994, s. 46

Courts of Judicature Act 1964, ss. 3, 4, 25(2), 50, 67(1), 68(1), 87, 96, para 12 schedule

Courts of Judicature (Amendment) Act 1995, ss. 17, 20

Criminal Procedure Code, ss. 374, 418A

Federal Constitution, arts. 4(1), 121(1), (1B), (2)(b), (c), 128(3), 159

Industrial Relations Act 1967, s. 9(5)
Interpretation Acts 1948 and 1967, s. 17A
Land Acquisition Act 1960, ss. 23, 24, 25, 49(1)
Land Acquisition (Amendment) Act 1997, ss. 1(2), 27, paras 27(a), (b)
Legal Profession Act 1976, s. 103E
National Land Code, s. 214A
Rules of the Court of Appeal 1994, r. 76
Rules of the Federal Court 1995, r. 126
Rules of the High Court 1980, O. 92 r. 4, O. 94 r. 4

Laws of the Gold Coast 1936 (West Africa), O. 41 r. 1, sch 3 to c.4

(Motions No: 08-4-2002(M) to 08-8-2002(M))
For the applicants - Robert Lazar (Teh Lay Kheng); M/s Shearn Delamore & Co
For the respondent - Nor Bee Ariffin; State Legal Adviser

(Motions No: 08-9-2002(N) & 08-10-2002(N))
For the applicants - Robert Lazar (Teh Lay Kheng); M/s Shearn Delamore & Co
For the respondent - Hinshawati Shariff; State Legal Adviser

(Motions No: 08-11-2002(J))
For the applicants - Robert Lazar (Teh Lay Kheng); M/s Shearn Delamore & Co
For the respondent - Umi Kalthum Abdul Majid; State Legal Adviser

(Motions No: 08-12-2002(N))
For the applicant - DP Naban (Lambert Rasaratnam); M/s Lee Hishamuddin
For the respondent - Hinshawati Shariff; State Legal Adviser

[Appeal from High Court, Melaka; No: 15-1-1997]

Reported by Usha Thiagarajah

JUDGMENT

Abdul Malek Ahmad FCJ:
We heard these nine motions together. They were all for extension of time to appeal to the Federal Court. The first five motions involved land acquisition matters in Melaka, the sixth, seventh and ninth land acquisition matters in Negeri Sembilan and the eighth a land acquisition matter in Johore.

Appearing for the first eight motions were Robert Lazar and Teh Lay Kheng and for the ninth motion DP Naban and Lambert Rasaratnam. The respondents were represented by the three respective state legal advisers; Nor Bee Ariffin for Melaka, Hinshawati Shariff for Negeri Sembilan and Umi Kalthum Abdul Majid for Johore.

The background facts were the same for all. All land acquisition appeals had been filed in the Court of Appeal but in view of certain conflicting decisions as to the proper forum for those appeals, there appears to be some confusion as to whether they should be heard in the Court of Appeal or only in this court. Hence the necessity for filing the motions. In addition, the land

acquisition appeal pertaining to the eighth motion had already been transferred from the Court of Appeal to the Federal Court on 15 January 2002. The question arising from that appeal in *Tanah Sutera Development Sdn. Bhd. v. Pentadbir Tanah Daerah Johor Bahru* [2000] 2 CLJ 14, and 96 other land acquisition appeals dealt with on that same date, was whether the transfer of land acquisition appeals from the Court of Appeal to the Federal Court was the correct and proper procedure.

The confusion probably began when s. 67 of the Courts of Judicature Act 1964 (hereinafter "the CJA") was amended by way of a blanket amendment in Act A886, which came into force on 24 June 1994, where the words "Supreme Court", wherever they appear in the CJA, were replaced by the words "Court of Appeal". The said s. 67 provided for the jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil matter. This would mean that from 24 June 1994, all appeals in civil matters from the High Court lay to the Court of Appeal instead of the Supreme Court and that included land acquisition cases. On the same date, *vide* Act A885, the Federal Constitution (hereinafter "the Constitution") was amended to establish the Court of Appeal from 24 June 1994.

The Land Acquisition Act 1960 (hereinafter "the LAA") was amended *vide* Act A999, which was published on 31 July 1997, to come into force on such date as the Minister may, with the approval of the National Land Council, by notification in the Gazette appoint. However, it was also provided that the amendments in ss. 23, 24, and 25 and para. 27(b) of Act A999 shall apply only to land acquisition cases referred to the court after the coming into force of the amending Act. Eventually, 1 March 1998 was appointed as the date of coming into force of Act A999.

The amendment to s. 49(1) of the LAA by para. 27(b) of Act A999 deleted the words "unless the amount awarded by the court exceeds five thousand ringgit" appearing in the proviso. The result is that where the decision comprises an award of compensation, there shall be no appeal therefrom.

Paragraph 27(a) of Act A999 amended s. 49(1) of the LAA by substituting for the words "Supreme Court" the words "Court of Appeal and to the Federal Court". This is the amendment relevant to our problem.

Contributing to the earlier confusion was the notion that it was once thought that the proper forum for appeals in land acquisition cases was the Court of Appeal as seen in *Pentadbir Tanah Daerah Melaka Tengah v. Mat Nayan bin Tak* [1996] 2 CLJ 618. There, the respondent landowner referred his claim for compensation to the High Court after being dissatisfied with the compensation awarded by his collector. The High Court increased the award to RM44,964.71 and the district land administrator sought leave to appeal against the 174.44 per cent increase.

The question before the Court of Appeal was whether leave was required to appeal in a land acquisition matter as the award was below RM250,000. It was contended that no leave was required under s. 68(1) of the CJA as it did not apply, on the premise that the LAA was a self-contained piece of legislation which conferred the applicant an independent right of appeal as long as the collector's award was above RM5,000.

The Court of Appeal was of the view that in the light of s. 4 of the CJA, the provisions of the CJA shall prevail and accordingly, the Court of Appeal had the jurisdiction under s. 67(1) of the CJA to hear the appeal stating that the right of appeal under s. 49 of the LAA confers the same right. Leave to appeal was granted since the amount was more than RM5,000 but less than RM250,000.

To be fair, this decision appears to be in error as s. 49(1) of the LAA as it stood when that appeal was heard states that appeals in land acquisition matters lay direct to the Federal Court and not the Court of Appeal which was only amended to take effect on 1 March 1998.

The position is strengthened by the decisions of this court in two other appeals. One is *Lim Chee Cheng & 4 Ors. v. Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam* (Federal Court Civil Appeal No. 02-15-2000(P)) which (Eusoff Chin CJ, Wan Adnan Ismail CJM and Ahmad Fairuz Sheikh Abdul Halim FCJ) on 18 October 2000 recorded a consent order between the parties.

It actually started off as Federal Court Civil Appeal 02-4-2000(P) following the decision in the High Court (Mokhtar Sidin J) on 12 September 1995. The Court of Appeal (NH Chan, Abu Mansor Ali and Ahmad Fairuz Sheikh Abdul Halim JJCA) on 26 February 1998 dismissed the appeal. Leave to appeal was granted by this court (Eusoff Chin CJ, Wan Adnan Ismail CJM and Abdul Malek Ahmad FCJ) *vide* Federal Court Civil Application No. 08-23-98(P) on 3 April 2000. The two questions posed were whether under the circumstances the Court of Appeal has jurisdiction to entertain the appeal and whether in the assessment of the market value of estate land within the meaning of s. 214A of the National Land Code, can the land administrator ignore the fact that estate lands are freely transferable to a single person or company. On 15 May 2000, this court (Eusoff Chin CJ, Abdul Malek Ahmad FCJ and Denis Ong Jiew Fook JCA) held that the appeal should be heard in the Federal Court, declared the proceedings in the Court of Appeal on 26 February 1998 null and void and granted the appellant an extension of time to file the appeal to the Federal Court which they did. The appeal then came to the Federal Court as Federal Court Civil Appeal 02-15-2000(P) as stated earlier.

The other case is *Batu Kawan Berhad v. Pentadbir Tanah Daerah Seberang Perai Selatan* [2002] 1 CLJ 633. The High Court matter (Abdul Hamid Mohamed J) was decided on 9 October 1995 and the Court of Appeal (NH Chan, Abu Mansor Ali and Abdul Malek Ahmad JJCA) dismissed the appeal with costs on 22 September 1997. Leave to appeal to the Federal Court (Eusoff Chin CJ, Zakaria Yatim FCJ and Gopal Sri Ram JCA) *vide* Federal Court Civil Application No. 08-77-97(P) was dismissed on 11 January 1999. Another motion to extend time to file the appeal to the Federal Court was made *vide* Federal Court Civil Application No. 08-76-2000(P) and on 18 October 2000, this court (Eusoff Chin CJ, Wan Adnan Ismail CJM and Ahmad Fairuz Sheikh Abdul Halim FCJ) granted, by consent of the parties, the order in terms.

On 7 February 2001, this court (Wan Adnan Ismail CJM, Ahmad Fairuz Sheikh Abdul Halim and Siti Norma Yaakob FCJJ) amended the Federal Court order dated 18 October 2000 to insert the words "that the decision of the Court of Appeal dated 22 November 1997 is null and void and further that the Federal Court order dated 11 January 1999 is null and void." The appeal was on that same date heard on the merits and was dismissed on 10 September 2001.

For effect, it is worthwhile to compare the position of s. 49(1) of the LAA before and after the relevant amendment. Before the said amendment, it read as follows:

Appeal from decision as to compensation

49(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Supreme Court:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom unless the amount awarded by the Court exceeds five thousand ringgit.

After the amendment, the provision states:

49. **Appeal from decision as to compensation.**

(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court.

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

The resultant effect of this amendment is that prior to 1 March 1998, all appeals in land acquisition matters lay to the Supreme Court. This appears to be in conflict with the blanket amendment of the CJA, *vide* Act A886, which came into force on 24 June 1994, which provided that all appeals from the High Court, including land acquisition matters, lay to the Court of Appeal.

Section 4 of the CJA states:

> 4. Provision to prevent conflict of laws
>
> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

The crucial words of that section appear to be "in force at the commencement of this Act" meaning that the inconsistency or conflict with any other written law should be at the point of time when the CJA was enacted and not subsequently.

This view is cemented by the finding of this court more than 20 years ago in *Pahang South Union Omnibus Co. v. Minister of Labour and Manpower & Anor* [1981] 1 CLJ 83; [1981] CLJ (Rep) 74 when it said:

> Mr. Kulasegaran, however, submits that *South-East Asia Fire Bricks* [1980] 2 MLJ 165 was decided *per incuriam* and is not good law, on the argument, briefly, to the effect that section 9(5) is inconsistent and conflicts with the provisions of section 25(2) of the Courts of Judicature Act 1964 which give the High Court the additional powers set out in the Schedule thereto and therefore with paragraph 1 of the Schedule which gives power to issue directions, orders or writs including writs *inter alia* of the nature of *certiorari*, and that in the circumstances the privative clause in section 9(5) cannot prevail against these provisions of the Courts of Judicature Act and is *pro tanto* void by virtue of section 4 thereof which provides that in the event of inconsistency or conflict between that Act and any other written law other than the Constitution in force at the commencement of that Act, the provisions of that Act shall prevail. Assuming for a moment for the sake of argument that there is in fact any such inconsistency or conflict as is contended, but there is none as will appear, section 4 of the Courts of Judicature Act can have no application as the provisions of the Courts of Judicature Act (apart from section 5 which took effect on September 16, 1963) came into force on March 16, 1964 but the Industrial Relations Act was enacted much later and brought into force on August 7, 1967 and indeed as a result of an amendment thereto section 9(5) itself only took effect on October 9, 1969, and it was therefore not in force at the commencement of the Courts of Judicature Act, thus negating any application of section 4 thereof in the event if at all of any inconsistency or conflict between the several statutory provisions in question.

It must be observed that in that case, the written law that is said to be in conflict with the CJA was not in force when the CJA was enacted. In our situation, the said written law was but there was no inconsistency or conflict between it and the CJA at the time the latter came into force. The fact that the inconsistency or conflict took place some 20 years later is therefore only of academic value and must probably be due to an oversight of the parliamentary draftsman in not making the amendment at the same time as the CJA in 1994.

Accordingly, the only conclusion that can be reached as regards the inconsistency or conflict is that between 24 June 1994, when Act A886 was enacted, up to 28 February 1998, the day before Act A999 came into force, all appeals in land acquisition matters lay to the Federal Court.

In short, the effect of the sequence of amendments to the Constitution, the CJA and the LAA on appeals against decisions of the High Court in land acquisition matters would be as follows:

(a) before the establishment of the Court of Appeal on 24 June 1994, all appeals prior to that date lay to the Supreme Court;

(b) for decisions from 24 June 1994, the appeals lay to the Federal Court up to 28 February 1998; and

(c) after 1 March 1998, all such appeals lay to the Court of Appeal but for land acquisition matters referred to the court after that date, there shall be no appeal where the award comprises an award for compensation.

As regards the transfer to this court by the Court of Appeal on 15 January 2002 of 97 land acquisition appeals in the *Tanah Sutera Development Sdn Bhd* case *(supra)*, I entirely agree with the reasoning of my learned brother Haidar FCJ in his judgment in this appeal, when he concluded that the Court of Appeal had no power to do so.

Therefore, for the first five motions pertaining to land acquisition matters in Melaka where the reference to the court was made before 1 March 1998 but the decisions in the High Court were made after that date, the appeals would lie to the Court of Appeal but for the remaining four motions relating to land acquisition cases in Negeri Sembilan and Johore where the decisions of the High Court were before 1 March 1998, the appeals would lie to the Federal Court. As stated earlier, the transfer of the land acquisition appeal in the eighth motion by the Court of Appeal to the Federal Court is declared null and void together with 96 other land acquisition appeals transferred by the Court of Appeal on the same date.

The first five motions are accordingly struck out and orders in terms are granted for the remaining motions. There shall be no order as to costs.

Haidar Mohd Noor FCJ:

There are nine applications by way of notices of motion before the court. They are:

(1) Mahkamah Persekutuan Permohonan Sivil No. 08-4-2002 (M)

(2) Mahkamah Persekutuan Permohonan Sivil No. 08-5-2002 (M)

(3) Mahkamah Persekutuan Permohonan Sivil No. 08-6-2002 (M)

(4) Mahkamah Persekutuan Permohonan Sivil No. 08-7-2002 (M)

(5) Mahkamah Persekutuan Permohonan Sivil No. 08-8-2002 (M)

(6) Mahkamah Persekutuan Permohonan Sivil No. 08-9-2002 (N)

(7) Mahkamah Persekutuan Permohonan Sivil No. 08-10-2002 (N)

(8) Mahkamah Persekutuan Permohonan Sivil No. 08-11-2002 (J)

(9) Mahkamah Persekutuan Permohonan Sivil No. 08-12-2002 (N)

Mr. Robert Lazar together with Miss Teh Lay Khang appear for the applicants in applications (1) to (8) and Mr. D.P. Danabalan and Mr. Lambert Rasaratnam appear for the applicant in application (9).

Y.B. Nor Bee binti Ariffin, legal adviser for Melaka, appears for the respondent in applications (1) to (5). Y.B. Hinshawati binti Shariff, legal adviser for Negeri Sembilan, appears for the respondent in applications (6), (7) and (9) whereas Y.B. Umi Kalthum binti Abdul Majid, legal adviser for Johor, appears for the respondent in application (8).

It was agreed that all the applications be heard together. Counsel for both parties agreed that for applications (1) to (5), the appropriate appellate court is the Court of Appeal. If the court agrees then these applications should be struck out. Parties agreed that in the event of such an order being made, each party bears its own costs.

Counsel for both parties in applications (6) to (9) agreed that the appropriate appellate court is the Federal Court. If the courts agrees, then in granting the applications, the parties agreed that each party bears its own costs.

So much for the agreement or concession made by the parties. Be that as it may, in view of the confusion as to the appropriate appellate court in relation to land acquisition cases, there is a need for consideration be given as to the appropriate appellate court and for this court, being the apex court in the country, to make a ruling accordingly.

Now, the confusion arose with the establishment of the Court of Appeal in the hierarchy of the court system in this country. It starts with the amendment to the Federal Constitution in 1994 by the Constitution (Amendment) Act 1994 (Act A885).

Constitution (Amendment) Act 1994 (Act A885)

Act A885 came into force on 24 June 1994. Article 121 was amended to establish the Court of Appeal by way of cl. (1B) which reads:

> There shall be a court which shall be known as the Mahkamah Rayuan (Court of Appeal) and shall have its principal registry in Kuala Lumpur, and the Court of Appeal shall have the following jurisdiction, that is to say:
>
> (a) jurisdiction to determine appeals from decisions of a High Court or a judge thereof (except decisions of a High Court given by a registrar or other officer of the Court and appealable under federal law to a judge of the Court); and
>
> (b) such other jurisdictions as may be conferred by or under federal law.

Section 46 of Act A885 provides that all references in and under the Federal Constitution or any written law to the "Supreme Court" shall be construed as references to the "Federal Court".

As a result of the amendments to the Federal Constitution, there would therefore be a need to make the necessary amendments to the Courts of Judicature Act 1964 ("CJA") to make provision for the composition of the Court of Appeal, its jurisdiction and powers. This was done by way of the Courts of Judicature (Amendment) Act 1995 (Act A886).

Courts Of Judicature (Amendment) Act 1995 (Act A886)

Act A886 came into force on 24 June 1994, that is, the same date that Act A885 came into force. The date of coming into force of both amended Acts has to be the same in view of, *inter alia*, the establishment of the Court of Appeal.

Part III of the original CJA which provides for the composition of the Federal Court, its criminal and civil jurisdiction including its original jurisdiction as well as its powers etc was amended and replaced therein by the Court of Appeal with the necessary modifications. There were other consequential amendments made also which we are not concerned here.

As Part III now makes provisions for the Court of Appeal, Act A886 therefore inserted Part IV therein to provide for the composition of the Federal Court, its jurisdiction and powers etc previously set out in Part III thereof with the necessary modifications. (see s. 20 of Act A886).

It seems clear that as of 24 June 1994, ordinarily all appeals from the decisions of the High Court will thenceforth go to the Court of Appeal and subject to ss. 87 and 96 of CJA, to the Federal Court.

I will then next have to consider the Land Acquisition (Amendment) Act 1997 (Act A999) which made amendments, *inter alia*, to s. 49(1) in relation to an appeal from a decision of the High Court in respect of land acquisition cases. This amendment provides for an appeal from a decision of the High Court to the Court of Appeal and to the Federal Court. Before the amendment an appeal against a decision of the High Court goes to the Supreme Court ("Federal Court").

Land Acquisition (Amendment) Act 1997 (Act A999)

Act A999 which amended, *inter alia*, s. 49(1) came into force on 1 March 1998 *vide* P.U.(B) 94/98 dated 26 February 1998. The original s. 49(1) reads:

> Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court (meaning High Court under section 1 thereof) to the **Supreme Court**.
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom **unless the amount awarded by the Court exceeds five thousand ringgit.** (emphasis added)

Act A999 amended s. 49(1) by substituting for the words "Supreme Court" the words "Court of Appeal and to the Federal Court" and deleting the words "unless the amount awarded by the court exceeds five thousand ringgit" in the proviso.

The effect of the amendment as of 1 March 1998 would appear to be:

(a) an appeal in respect of a **decision** of the High Court as from 1 March 1998 goes to the Court of Appeal and to the Federal Court other than an award of compensation.

(b) The amendment to the proviso shall only apply to land acquisition cases **referred** to the High Court after 1 March 1998.

Arising out of the amendments to the three legislation, the appropriate appellate court in respect of land acquisition cases may be categorised as follows:

(i) Any decision of the High Court prior to 24 June 1994 (the date of the establishment of the Court of Appeal) goes to the Supreme Court (Federal Court).

(ii) Any decision of the High Court between 24 June 1994 and before 1 March 1998, is the appellate court the Federal Court or the Court of Appeal?

(iii) Any decision of the High Court after 1 March 1998 goes to the Court of Appeal and to the Federal Court with a proviso that where the decision comprises of an award of compensation there shall be no appeal in respect of the cases referred to the High Court after 1 March 1998.

Category (i) is without doubt very clear as to the appropriate appellate court.

Category (ii) creates an interesting situation for the period 24 June 1994 to 28 February 1998, for we have the Court of Appeal under CJA as the appellate court against a decision of the High Court and at the same time under the Land Acquisition Act 1960, an appeal against a decision of the High Court goes to the Supreme Court (Federal Court) until it was amended on 1 March 1998 *vide* Act A999. This is the grey area where we are concerned with here.

We thus have two parallel Federal legislation in conflict with each other in regard to the appropriate appellate court against a decision of a High Court for the said period. Interestingly enough this issue was considered by the Court of Appeal in *Pentadbir Tanah Daerah Melaka Tengah v. Mat Nayan bin Tak* [1996] 2 CLJ 618 when considering whether the Court of Appeal has the jurisdiction to hear an appeal from a decision of the High Court in respect of land acquisition cases in view of the original s. 49(1) of the Land Acquisition Act 1960 which specifies the Supreme Court (Federal Court) as the appellate court at the material time and if it has the jurisdiction, whether leave is required in view of the amount involved.

In *Mat Nayan*'s case, both Mahadev Shankar JCA, and NH Chan JCA, in granting leave to appeal (which is not the issue here) ruled that the Court of Appeal had the jurisdiction to hear the appeal pursuant to s. 67(1) read with s. 4 of CJA. While s. 67(1) of CJA provides the jurisdiction for the Court of Appeal to hear an appeal from a decision of the High Court there is a conflict here, as I stated earlier, where at the material time s. 49(1) provides for an appeal to go direct to the Supreme Court (Federal Court). To resolve the conflict, the learned judges of the Court of Appeal resorted to s. 4 of CJA which reads:

> 4. Provision to prevent conflict of laws
>
> In the event of inconsistency or conflict between this Act and any other written law other than the Constitution **in force at the commencement of this Act, the provisions of this** Act shall prevail. (emphasis added)

With respect, the learned judges did not adequately consider the words in s. 4 *viz*, "in force at the commencement of this Act". In my view, the conflict envisages in respect of any other written law in conflict at the commencement of CJA, that is, 16 March 1964. At this date there was no conflict with the

original s. 49(1) of the Land Acquisition Act 1960 as under CJA an appeal from a decision of the High Court lies to the Federal Court, as is similarly provided by s. 49(1). The establishment of the Court of Appeal, as I stated earlier, came about only on 24 June 1994. It was contended by counsel for the applicants as well the legal advisers acting for the respondents that the learned judges in *Mat Nayan*'s case in considering s. 4 of CJA did not have the benefit and assistance of the Federal Court case of *Pahang South Union Omnibus Co. Bhd. v. Minister of Labour and Manpower & Anor* [1981] 1 CLJ 83; [1981] CLJ (Rep) 74 and the Supreme Court case of *Mohamed Habibullah bin Mahmood v. Faridah bte Dato' Talib* [1993] 1 CLJ 264. Had they had the benefits of these two cases, according to counsel for all the parties, the learned judges could very well have come to a different conclusion.

In *Pahang South Union Omnibus,* the Federal Court in dealing with the power of the Minister of Labour and Manpower under s. 9(5) of the Industrial Relations Act 1967 (pertaining to recognition of the trade union) which incorporates a privative or ouster clause provision that a decision of the Minister under that section shall be final and shall not be questioned in any court is inconsistent and conflicts with s. 25(2) of CJA which gives the High Court the additional powers set out in the Schedule thereto and therefore para. 1 of the Schedule which gives power to issue directions, orders or writs including writs *inter alia* of the nature of *certiorari* and that in the circumstances the privative clause in s. 9(5) cannot prevail against these provisions of CJA and is *pro tanto* void by virtue of s. 4 thereof which provides that in the event of inconsistency or conflict between CJA and any other written law other than the Constitution in force at the commencement of CJA, the provisions of CJA shall prevail:

> Assuming for a moment for the sake of argument that there is in fact any such inconsistency or conflict as is contended, but there is none as will appear, section 4 of the Courts of Judicature Act can have no application as the provisions of the Courts of Judicature Act (apart from section 5 which took effect on September 16, 1963) came into force on March 16, 1964 but the Industrial Relations Act was enacted much later and brought into force on August 7, 1967 and indeed as a result of an amendment thereto section 9(5) itself came into effect on October 9, 1969 and **it was therefore not in force at the commencement of the Courts of Judicature Act,** thus negating any application of section 4 thereof in the event if at all of any inconsistency or conflict between the several statutory provisions in question. (emphasis added)

The case of *Mohamed Habibullah bin Mahmood* is not directly on point with the facts of the case before us though s. 4 of CJA was dealt with by the Supreme Court. There s. 4 was dealt with more in the context of the word "Constitution" used therein in relation to the law incorporating art. 121(1A)

in the Federal Constitution which ousted the jurisdiction of the civil courts in respect of any matter within the jurisdiction of the Syariah Courts. The law is the Constitution (Amendment) Act 1988 and it was argued there since the Constitution (Amendment) Act 1988 was not made retrospective, the jurisdiction of the High Court under ss. 23 and 24 shall continue or at least to be concurrent with the jurisdiction of the Syariah Court, as it was caught by s. 4 of CJA. Mohamed Azmi SCJ, in dealing with the Constitution (Amendment) Act 1988 and s. 4 of the CJA stated at p. 278:

> Furthermore the provision of s. 4 of the Courts of Judicature Act itself, does not support the proposition that it is capable of rendering ineffective for whatever reason the provisions of any Constitution Amendment Act enacted under art. 159. The words, 'other than the Constitution' in s. 4 are not mere surplusage. Under art. 160, the term 'written law' includes the Constitution and the word 'law' and 'federal law' includes 'any Act of Parliament' which amends the Constitution under art. 159. The intention of Parliament in s. 4 is expressly to exclude the Constitution or any Act of Parliament enacted under art. 159 which amends the Constitution. In any event, therefore, s. 4 of the 1964 Act is not applicable to the Constitution (Amendment) Act 1988, and it cannot prevail over art. 121(1A) of the Constitution.

From the above, it can be distilled that where there is a conflict between any other written law and CJA other than the Constitution in force at its commencement then to that extent CJA prevails. In the event there is a conflict between CJA and any other written law after the commencement of CJA, it would appear that s. 4 of CJA is inapplicable. (see *Pahang South Union Omnibus, supra*). However, in so far as the law enacted under art. 159 of the Federal Constitution to amend the Federal Constitution is concerned, such law has no application within the context of any other written law under s. 4 of CJA.

I am of the view therefore that s. 4 of the CJA has no application here. In that event until s. 49(1) is amended the appropriate appellate court for land acquisition cases is the Federal Court. In that respect the decision in *Mat Nayan*'s case on the application of s. 4 of CJA by the Court of Appeal and that it had the jurisdiction at the material time to hear the land acquisition case cannot be supported.

In respect of category (iii), it seems clear to me that as of 1 March 1998, an appeal against a decision of the High Court goes to the Court of Appeal and to the Federal Court but, such an appeal is only in respect of matters other than an award of compensation. However, in respect of land acquisition cases referred to the High Court before 1 March 1998, an appeal on an award of compensation is preserved. This is provided by s. 1(2) of the Land Acquisition (Amendment) Act 1997.

Ultimately, the important legislation for consideration is the Federal Constitution, the supreme law of the country. Previously, under Part IX of the Federal Constitution in relation to THE JUDICIARY, the words "judicial power" were used in art. 121(1). Amendments were made by the legislature in 1988 *vide* Act A704 where those words were deleted and the amendment was made, if I am not wrong, in the light of the majority judgment of the Supreme Court in *Public Prosecutor v. Dato' Yap Peng* [1987] 1 CLJ 550; [1987] CLJ (Rep) 284 which struck down the amendment to s. 418A of the Criminal Procedure Code giving the power of transfer of any particular case triable by a criminal court subordinate to the High Court on the issuance of a certificate to that effect by the Public Prosecutor, as being in violation of the provisions of art. 121(1) and therefore unconstitutional and invalid under art. 4(1).

Be that as it may, the jurisdiction of the Federal Court is provided by art. 121(2) of the Federal Constitution:

> There shall be a court which shall be known as the Mahkamah Persekutuan (Federal Court) and shall have its principal registry in Kuala Lumpur, and the Federal Court shall have the following jurisdiction, that is, to say:
>
> (a) jurisdiction to determine appeals from decisions of the Court of Appeal, of the High Court or a judge thereof; and
>
> (b) such original jurisdiction or consultative jurisdiction as is specified in Articles 128 and 130; and
>
> (c) such other jurisdiction as may be conferred by or under federal law.

Article 121(2)(b), *inter alia*, provides for the original jurisdiction of the Federal Court as is specified in art. 128. Article 128(3) provides that the jurisdiction of the Federal Court to determine appeals from the Court of Appeal, the High Court or a judge thereof shall be such as may be provided by federal law. The then Supreme Court in *Lye Thai Sang & Anor v. Faber Merlin (M) Sdn. Bhd. & Ors* [1985] 2 CLJ 423; [1985] CLJ (Rep) 196 in considering whether the court has the power to review appeals heard and disposed of by it, stated that "law" referred to in cl. 3 of art. 128 is CJA. In the circumstances it is my view that art. 121(2)(a) is an enabling provision. Quite apart from its original or consultative jurisdiction as is specified in arts. 128 and 130 of the Federal Constitution, art. 121(2)(c) also provides for other jurisdiction as may be conferred by or under federal law. The word "other" must, in my view, mean other jurisdiction than that provided by CJA, that is, there may be legislation that may provide for jurisdiction to the Federal Court to hear an appeal direct from a decision of the High Court instead of *via* the Court of Appeal under CJA. Such legislation that I can think of are:

(a) section 49(1) of the Land Acquisition Act 1960 until it was amended;

(b) section 374 of the Criminal Procedure Code which relates to *habeas corpus* matters;

(c) section 103E of the Legal Profession Act 1976 relating to a decision of the High Court in respect of disciplinary matters of the members of the Bar.

In respect of (a) above, there has been a judgment of this court recently by way of *obiter dictum*, impliedly saying that the Federal Court is the court having jurisdiction in respect of land acquisition cases even though at the time of the lodgement of the appeal on 6 November 1995 the Court of Appeal was in existence. The case is *Batu Kawan Berhad v. Pentadbir Tanah Daerah Seberang Perai Selatan* [2002] 1 CLJ 633 where Siti Norma Yaakob FCJ, speaking for the court stated at p. 640:

> It was based on that reasoning that the appellant's solicitors filed a notice of motion dated September 7, 2000, in this court for an extension of time to appeal against the High Court decision dated October 9, 1995, and to proceed to rehear the matter on its merits. On October 18, 2000, this court allowed the application on the undisputed ground that all proceedings in the Court of Appeal and subsequent proceedings relating thereto in this court were null and void. To that end the Court of Appeal order dated September 22, 1997, dismissing the appellant's appeal with costs as well as the order of this court dated August 11, 1998, dismissing the appellant's application for leave to appeal should, for completeness, have been declared to be null and void and expressed to be so in consent order dated October 18, 2000. However a perusal of that latter order shows no such declaration. It was to correct this omission that Dato' Alizatul Khair raised the preliminary point for it is her contention that if left uncorrected the Court of Appeal order dated September 22, 1997, and the order of this court dated August 11, 1998, would appear to be valid and subsisting. For the reasons already stated, this could never be. We entirely agree with her.

Under (b) above, as far I know no party has raised the issue of jurisdiction of the Federal Court when ordinarily such appeal should go to the Court of Appeal when it came into existence (see s. 50 of CJA).

As regards (c) there has been a decision of this court which set aside the order of the Court of Appeal on ground of its lack of jurisdiction though we do not have the benefits of a written judgment. It is the case of *Gana Muthusamy v. LM Ong & Co* [1998] 4 CLJ 878. The Court of Appeal, itself, through Gopal Sri Ram JCA, expressed reservation whether it has the jurisdiction.

It seems clear to me that the Federal Constitution by art. 121(2)(b) in particular by way of art. 128 provides for jurisdiction to the Federal Court under CJA and art. 121(2)(c) provides for other jurisdiction to the Federal Court as may be conferred by or under federal law unless caught by s. 4 of CJA.

Transfer Of Cases From The Court of Appeal To The Federal Court

There is yet the other issue in respect of the power of the Court of Appeal to transfer land acquisition cases to the Federal Court. In the applications before us, only application no. 8 is affected. According to its counsel, Mr. Robert Lazar, when the said application was filed in this court on 11 January 2002, the order of transfer has not been made yet by the Court of Appeal. It was ordered by the Court of Appeal on 15 February 2002 (see *Tanah Sutera Development Sdn. Bhd v. Pentadbir Tanah Daerah Johor Bahru* [2002] 2 CLJ 14).

Mr. Robert Lazar indicated that he would be quite happy if this court takes the view that the Court of Appeal has the power to transfer but he, however, was of the view that the Court of Appeal has no such power. Hence the application no. 8 before this court. He therefore sought the ruling of this court on this issue as the order of the Court of Appeal affected many other appeals besides his client's appeal. *(Tanah Sutera, supra)*.

The Court of Appeal in *Tanah Sutera* whilst acknowledging that it had no jurisdiction to hear the appeal relating to land acquisition cases before it citing the decision of the 'Federal Court' in *Batu Kawan Bhd. v. Pentadbir Tanah Daerah Seberang Perai Selatan* [1998] 3 CLJ 681 (it should be the decision of the Court of Appeal and the issue was on compensation only) thought that it had nevertheless the requisite jurisdiction and power to order a transfer. In support thereof it refers to three provisions:

(a) paragraph 12 of the Schedule to the Courts of Judicature Act 1964;

(b) rule 76 of the Rules of the Court of Appeal 1994; and

(c) Order 92 r. 4 of the Rules of the High Court 1980.

Paragraph 12 of the Schedule reads:

> 12. Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:
>
> Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

The Court of Appeal then took the approach that the words "any other court" must in that context be read generously and purposively, citing *Pepper (Inspector of Taxes) v. Hart* [1993] AC 593, per Lord Griffith at p. 617. It then quoted s. 17A of the Interpretation Acts 1948 and 1967 to show the will of Parliament. Section 17A reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

I agree on the purposive approach that can be taken by the court but the issue is whether the words "any other court" was read in the right context by the Court of Appeal so as to read them generously and purposively.

With respect, the Schedule to the CJA is made pursuant to the power under s. 25(2) thereof wherein additional powers may be set out in the Schedule. Such powers are conferred on the High Court. In that context the word "court" in para. 12 of the Schedule must refer to the High Court as the word "court" under s. 3 of CJA means the Federal Court, the Court of Appeal or the High Court, **as the case require**.

Looking at s. 25 of CJA and the meaning of "court" the word "any other court" should in its proper context mean a court of co-ordinate jurisdiction. This is further amplified by the power given to transfer any proceedings to or from a subordinate court and to give any directions to the further conduct thereof provided that this power shall be exercised in such manner as may be prescribed by any rules of court. I find no such power for the Court of Appeal to do so. "Subordinate court" under s. 3 of CJA means 'any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court ... .' It cannot be intended to include a higher court, that is, the Federal Court in this case as seemed to be what the Court of Appeal intended it to mean.

On the issue though it has no jurisdiction to hear the appeal, the Court of Appeal nevertheless was of the view that it had the jurisdiction and power to order a transfer of the appeal to the Federal Court by stating that the two conditions set by *Lee Lee Chang (f) v. Seow Peng Kwang* [1960] 26 MLJ 1, were satisfied, I need to examine what the court said in *Lee Lee Chang.*

In *Lee Lee Chang* this is what Thompson CJ, said at p. 3 in regard to "jurisdiction" and "powers" in a statute:

> It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where different words are, as here, used repeatedly. This leads to the view that in the Ordinance there is distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.

As is clear from what is stated by Thompson CJ, if the Court of Appeal here has no jurisdiction in respect of the appeal before it, it follows that it has no power to transfer. It cannot, with respect, fall back on the Schedule to CJA to look for jurisdiction on transfer when it is clear that it is intended only to apply to the High Court.

Rule 76 of the Rules of the Court of Appeal 1994 and O. 94 r. 4 of the Rules of the High Court 1980 relied on by the Court of Appeal have no application to the facts of the matter before us. While I appreciate "The only postulate for the exercise of jurisdiction is the interests of justice" per Gopal Sri Ram JCA, we still have to cross the first hurdle ie, the jurisdictional issue. Even if the court has the jurisdiction, in dealing with the matters before it, the court cannot exceed its powers. The Court of Appeal agreed it has no jurisdiction and therefore it has no power of transfer unless it is so provided by law.

The Court of Appeal went on to quote a passage from the Privy Council case of *Chief Kofi Forfie v. Barima Kwabena Seifah* [1958] All ER 289 by way of analogy and I quote "if we have no jurisdiction to hear this appeal, we nevertheless have jurisdiction to transfer this appeal to a court which has jurisdiction to hear and dispose of it; in this instance the Federal Court". With respect, the facts in *Chief Kofi Forfie* and the facts of the appeal before it, are totally different even to justify the analogy.

Chief Kofi Forfie is a case where the president of the Chief Commissioners Court when giving judgment on 10 May 1949 had no power to exercise judicial functions on that day as his appointment to preside over it stood rescinded. This was the main ground of appeal against his decision to the West Africa Court of Appeal. Possibly realising this error, he was appointed again for the period 23 June to 30 June 1949 wherein on 29 June 1949 acting under a power to review a judgment conferred by O. 41 r. 1 contained in Sch. 3 to c. 4 of the Laws of the Gold Coast, 1936 he reviewed his judgment of 10 May 1949 and delivered a judgment identical in terms with his original judgment. On appeal, the West Africa Court of Appeal held that the judgment delivered on review on 29 June 1949 must be held to be also a nullity as the judgment delivered on 10 May 1949, was a nullity.

On appeal to the Privy Council, it was held, after quoting a passage from the judgment of Lord Greene, MR in *Craig v. Kanseen (1)* [1943] All ER 108 at p. 113, at p. 290:

> Assuming that the judge had no power on June 29, 1949 to review his judgment on May 10, 1949 he nevertheless had power to declare it a nullity and proceed to give a fresh judgment.

Given the matters before the Court of Appeal, it appears to me with respect, that to even rely on *Chief Kofi Forfie* by way of analogy is entirely wrong and misplaced.

In the circumstances I am of the view that the Court of Appeal has no power to transfer cases to a higher court, that is, the Federal Court. The proper order should have been to strike out the appeal and leave it to the appellant to proceed with the necessary steps as provided by the Rules of the Federal Court 1995, in particular r. 126.

While I appreciate the concern of the Court of Appeal to see that justice is accorded to the litigants but at the same time it is not appropriate for the Court of Appeal to speculate whether the applicant/appellant would be granted an extension of time to appeal by the Federal Court to justify it ordering the transfer of the appeal to the Federal Court on ground of justice. I should say that the matter should be left to the good wisdom of the Federal Court to decide. There are established principles on which the court will exercise its powers in such a situation (see *Sinnathamby & Anor v. Lee Chooi Ying* [1987] 1 CLJ 157; [1987] CLJ (Rep) 336). In my view, this is a proper case for the court to exercise its discretion in favour of the applicants having regard to the grounds stated therein.

For the reasons stated I make the following orders:

(1) Federal Court Civil Application No. 08-4-2002 (M) to No. 08-8-2002 (M) – are struck out as the Court of Appeal is the appropriate appellate court.

(2) Federal Court Civil applications No. 08-9-2002 (N), No. 08-10-2002 (N), No. 08-11-2002 (J) and No. 08-12-2002 (N) are allowed and I order that the notices of appeal be filed within seven days of this order.

(3) The transfer of all the land acquisition appeals including the transfer in respect of the appeal under application No. 08-11-2002 (J) by the Court of Appeal on 15 January 2002 is null and void and the order of transfer is set aside.

(4) As agreed by the parties, each party shall bear its own costs and I order that the deposit paid be refunded.

My learned Chief Judge, Malaya has read my judgment and agreed with the reasons and the conclusion therein.

Denis Ong JCA:

I have had the advantage of reading the judgments in draft of my learned brothers Abdul Malek Ahmad, Haidar Mohd. Noor and Mohtar Abdullah FCJ. With respect, I differ from them in my decision with regard to the first five motions concerning the lands in Malacca and would give my reasons for doing so.

There are altogether nine motions for extension of time and leave to appeal to the Federal Court. Five motions are concerned with lands in the State of Malacca, three with lands in Negeri Sembilan, and one with land in the State of Johore. In all these cases Notices of Appeal to the Court of Appeal were filed by the appellants/applicants (hereafter referred to collectively as "the applicants") on diverse dates against orders made by the High Court.

The question in general is whether the appeals of the applicants lie to the Court of Appeal or to the Federal Court. Essentially, the answer to that question depends upon the right of appeal of the applicants which must be determined having regard to the relevant dates on which such notices of appeal were filed and also to the relevant provision of s. 49(1) of the Land Acquisition Act 1960 (Act 486) which section confers such right of appeal. Section 49 so far as is relevant, reads thus:

> 49 Appeal from decision as to compensation
>
> (1) Any person interested, including the Land Administrator and any person ... on whose behalf the proceedings were instituted pursuant to section 3 may appeal from the decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.
>
> (2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in suits in the High Court:
>
> Provided that the time within which an appeal may be presented shall only be capable of enlargement by order of a Court in such special circumstances as the Court may think fit.
>
> (3) (Omitted).

The words "Court of Appeal and to the Federal Court" in sub-s. (1) of s. 49 were substituted for the words "Supreme Court", previously in that subsection, by s. 27 of the Land Acquisition (Amendment) Act 1997 (Act A999) and the

reason stated in the explanatory statement to the bill for that Act for the substitution was "in view of the introduction of the Court of Appeal as an additional court for appeal". The proviso to sub-s. (1) of s. 49 was also amended by way of deletion of the words "unless the amount awarded by the court exceeds five thousand ringgit" in such proviso previously and the reason stated in such explanatory statement for the deletion was that it was a consequential amendment necessitated by the introduction of sub-s. 40D(3) also by Act A999. Subsection (3) of s. 40D declares that any decision as to the amount of compensation awarded by the High Court under that section is final and is non-appealable. In accordance with s. 1(2) of Act A999 the amendment to the proviso to sub-s. (1) of s. 49 apply only to land acquisition cases referred to the High Court by the land administrator after 1 March 1998 the date of coming into force of Act A999 (see P.U.(B)94/98). Act A999 itself was published on 31 July 1997.

Section 49(1) as amended by Act A999 embodies two provisions: (1) a right of appeal to the Court of Appeal; and (2) a right of appeal to the Federal Court. In regard to the right of appeal to the Court of Appeal, it is clearly a new and additional right of appeal created for the "person interested" named therein – new, in the sense that it never existed before and also in relation to the Court of Appeal which was newly established by the insertion of cl. (1B) to art. 121 of the Federal Constitution by s. 13 of the Constitution (Amendment) Act 1994 (Act A885) which was published on 23 June 1994 and came into force on 24 June 1994; additional, in relation to the existing right of appeal as at 24 June 1994 from the High Court to the Federal Court which is the highest Court in Malaysia.

Simultaneously, in accordance with s. 46 of Act A885 upon the coming into force of that Act that is, on 24 June 1994, all references in and under the Federal Constitution or any written law to the Supreme Court are to be construed as references to the Federal Court. Act 486 is such a "written law" within the meaning of that expression as defined in the Interpretation Acts 1948 and 1967 (Act 388) which came into force on 19 October 1989. Consequently, reference to "Supreme Court" in s. 49(1) of Act 486 is read as a reference to the Federal Court with effect from 24 June 1994. From that date the Supreme Court ceased to exist and the right of appeal of the person interested was from the High Court to the Federal Court. Proceedings which included land acquisition appeals pending in the Supreme Court as at 23 June 1994 were saved and continued or proceeded with before the Federal Court by a saving and transitional provision in s. 17 of the Courts of Judicature (Amendment) Act 1995 (Act A909) published on 16 February 1995 but in force retrospective to 24 June 1994 by virtue of s. 1 of that Act. For that purpose the Federal Court was vested with and shall exercise all the powers

of the Supreme Court prior to 24 June 1994. So far as the right of appeal to the Federal Court was concerned, it was plain sailing; it existed before as a right of appeal to the Supreme Court and devolved upon the Federal Court after the change over from Supreme Court to Federal Court. The amendment to s. 49(1) in this respect thus represented no more than a revision exercise by the legal draftsman.

There was thus a hiatus between 24 June 1994 the date on which the Court of Appeal came into existence and 1 March 1998 the date on which the right of appeal to the Court of Appeal was conferred on the person interested in s. 49(1) of Act 486 in the sense that such person was without a right of appeal to the Court of Appeal so that it might fittingly be described that during such hiatus such person interested literally leap-frogged the Court of Appeal from the High Court to the Federal Court. The creation and interposition of the new and additional right of appeal to the Court of Appeal by the amendments to s. 49(1) brought about by s. 27 of Act A999 was obviously to confer on the person interested that right and to stop any leap-frogging from the High Court to the Federal Court but only with effect from 1 March 1998 onwards and not before that date.

The new right of appeal thus created is a substantive right and not merely a procedural matter. Thus such amendment could only apply prospectively and not retrospectively unless so expressed in clear terms to that effect: *Lee Chow Meng v. PP* [1978] 2 MLJ 36(FC). As observed earlier, Act A999 was published on 31 July 1997 and came into force only on 1 March 1998. By s. 1(2) thereof, the amendments in s. 27(b) was also expressed to apply only to land acquisition cases referred to the High Court after 1 March 1998 ie, prospectively and there was nothing about retrospective application. Thus, to an extent Act A999 achieved in bridging the gap between the High Court and the Federal Court by providing a right of appeal to the Court of Appeal for the person interested but only from 1 March 1998 onwards and not before that date. The hiatus between 24 June 1994 and 1 March 1998 remains and appeals from the High Court in land acquisition cases continue to be brought directly to the Federal Court during that hiatus, leapfrogging the Court of Appeal.

Reverting to the first five motions which concerned lands in the State of Malacca, it is observed that in all of them the objection and reference was to the amount of compensation awarded by the land administrator and reference to the High Court was made in the case of the fifth motion on 3 November 1995 as was evident from the Form N exhibited; whereas in the remaining first four motions, such reference was made on or about 15 November 1996 as was evident from their Form N exhibited. In the case of the fifth motion the High Court order was dd. 20 August 1999 and the notice of appeal to the

Court of Appeal was dd. 9 September 1999. In the cases of the remaining first four motions the High Court orders were all dd. 25 March 1999 and the Notices of Appeal to the Court of Appeal were dd. 19 April 1999.

The issue here is whether the appeals lie to the Court of Appeal or to the Federal Court.

In my view all five cases are governed by the proviso to sub-s. (1) of s. 49 before its amendment by s. 27(b) of Act A999 because:

(i) the objection and reference was against the written award of the land administrator as to the amount of compensation notified to the applicants in Form H;

(ii) on those dates neither s. 40D(3) nor the proviso to sub-s. (1) of s. 49 in its amended form came into force. The amendments introduced by ss. 23 and 27(b) operated prospectively with effect from 1 March 1998 and had no retrospective application;

(iii) on those dates although the Court of Appeal was already established, no right of appeal was conferred on the applicants until 1 March 1998. In short, the objection and reference took place during the hiatus; and,

(iv) on those dates their rights of appeal were to the Federal Court and those substantive rights could not be altered or affected by orders of the High Court issued after 1 March 1998.

For these reasons stated, I am of the opinion that the appeals lie to the Federal Court and not to the Court of Appeal in these cases. The notices of appeal to the Court of Appeal filed were thus mistaken.

The 6th, 7th and 9th motions concerned lands in Seremban. It is also observed that in all three of them the objection and reference was to the amount of compensation awarded as their Form N dated 3 May 1994, 9 September 1993, 21 February 1994 respectively disclosed. The High Court orders were made on 21 February 1995, 21 December 1995 and 14 February 1996 respectively.

The issue here is the same as in the first five motions namely, whether the appeals lie to the Court of Appeal or to the Federal Court. And for the same reasons I answer that the appeals lie to the Federal Court and not to the Court of Appeal. Consequently, the notices of appeal to the Court of Appeal filed were also mistaken.

In the premises and for the explanation given by learned counsel for the applicants which I accept, I would allow all these motions and order in terms but make no order as to costs.

As regards the 8th motion which concerned lands in Johore Baru, on the chronology of events derived from the motion papers I am also of the opinion that the appeal in this case lies to the Federal Court and not to the Court of Appeal for the same reasons. Consequently, I would also allow the motion and order in terms and make no order as to costs.

Finally, on the issue of whether the Court of Appeal has power to transfer this appeal to the Federal Court, I agree for the reasons given by my learned brother judges that the Court of Appeal has no such power and the transfer of this appeal to the Federal Court was consequently null and void.